

KASER BROTHERS

IBLA 76-243

Decided March 29, 1976

Appeal from decision by District Manager, Prineville, Oregon, District, Bureau of Land Management, notifying the grazing lessees of a reduction in their grazing lease (OR-05-76-1).

Affirmed.

1. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Grazing Leases: Generally -- Rules of Practice: Appeals: Burden of Proof

A determination by a District Manager of the grazing capacity of lands offered for a section 15 grazing lease will not be overturned in the absence of a clear showing of error. The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly.

APPEARANCES: Robert R. Kaser, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Kaser Brothers have appealed from a decision by the Manager of the Prineville, Oregon, District Office, Bureau of Land Management, dated August 22, 1975, which notified appellants that their grazing lease No. 36057355 was being reduced from 248 AUMs on 1,485 acres to 59 AUMs on 1,509 acres in Jefferson County, Oregon.

The record shows that appellants' grazing lease originally issued on June 13, 1973, for a period through February 29, 1976, pursuant to section 15 of the Taylor Grazing Act of 1934, as amended, 43 U.S.C. § 315(m) (1970). The District Office notified appellants of the proposed grazing reduction by letter dated July 28, 1975, stating that:

* * * During the summer of 1974 a range survey was completed in Jefferson County and grazing capacities were established on national resource lands (federal range). The new AUM figure reflects the findings of that range survey. Federal regulations state that "A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with 4121.2-1(b)", 43 CFR 4125.1-1(i)(1).

It is proposed to reduce your present grazing lease of 248 AUMs on 1,485 acres to a surveyed grazing capacity of 59 AUMs on 1,509 acres. * * *

In accordance with 43 CFR 4121.3-3(c) 1/ appellants were allowed 15 days to show cause why their grazing lease should not be reduced. When no response was received by the District Office the decision of August 22, 1975, issued.

Appellants state on appeal that the District Manager's reduction is entirely too great, and not realistic. They contend that the range survey was made when conditions were the worst they have been since the drought of the 1930's.

The Bureau has responded with a detailed analysis of the appeal. 2/ While admitting that 1973 and 1974 were drought years, the Bureau states that this is not material to the validity of this range survey. The analysis emphasizes that the ocular reconnaissance survey is based on several indices and long-term actual use, not the quantity of forage produced during any given year. In addition, the analysis points out that forage requirement studies were conducted during the same year as the 1974 range

1/ This section of the regulations provides the procedures for adjustments as follows:

"The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will inform the lessee of his right of appeal in accordance with Part 4 of this title. If no appeal is filed within the time allowed, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision."

2/ We served appellants a copy of this analysis and afforded them an opportunity to reply. No comments have been received.

survey. Therefore, no adjustment for abnormal growing conditions is required according to the BLM Manual 4412.11a3i(c). 3/

The grazing regulations provide that the District Manager is responsible for the management of the public grazing lands. 43 CFR 4121.2-1(a) specifically states:

Minimum requirements, rating and classification of lease land.

(a) Land Resource Consideration. The authorized officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, wild free-roaming horses and burros, and other multiple uses.

43 CFR 4121.2-1(b) also provides:

(b) Grazing capacity, seasons of use, and maximum annual period of use. The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

The District Manager's responsibility includes making downward adjustments in existing leases when necessary. 43 CFR 4121.1-3(a). He made his decision in this instance to reduce appellants' grazing lease only after determining that the grazing capacity of the leased land was not sufficient to accommodate their existing use. Although given the opportunity, appellants did not provide any information to counter this determination.

3/ This section of the BLM Manual provides in pertinent part:

"Abnormal Growing Conditions. Completing forage requirement studies for each specific survey area covered in a particular year makes the established requirements directly applicable to the survey area without the need of adjustments for any abnormal growing conditions that may have prevailed. * * *"

It is well established that a determination by a District Manager of the grazing capacity available for use by livestock on public land offered for lease will not be overturned in the absence of a clear showing of error. John T. Murtha, 19 IBLA 97 (1975); Douglas F. Peterson, 13 IBLA 351, 353 (1973). The burden of proof is upon the party challenging such determination to show that the decision is erroneous or that he has not been dealt with fairly. John T. Murtha, *supra*, 101; Claudio Ramirez, 14 IBLA 125, 127 (1973). Appellants have not met this burden. The District Manager's decision is clearly supported by the record. He has acted consistent with both the requirements of the regulations and sound range management practices for the area.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

